without the receipt could not enforce it. The bank might pay either but need pay neither, — a complete deadlock. In the principal case the bank did in fact break that deadlock by paying to the donee, so that even according to *Edwards* v. *Jones* the bill must have been dismissed; but the opinion, by Mr. Justice Byrne, departed radically from the doctrine of that case. He decided that the delivery of the instrument, with the power of attorney upon it, was a final and complete assignment of the obligation because the power of attorney was not in the nature of a power revocable by death, and because, even if that were not sound, the appointment of the donee as executor confirmed the gift. It is difficult to see the *rationale* of the second ground, why what was not a gift should become a gift because of a subsequent irrelevant appointment, but the first ground is clearly inconsistent with *Edwards* v. *Jones*. That case, it is true, is not referred to, but *Fortescue* v. *Barnett* 3 Myl. & K. 36, which it is supposed to have overruled, and *Re Patrick*, [1891] 1 Ch. 82, which seemed willing to differ with it, are vaguely approved. The whole expression of the opinion is tentative, not perhaps always clearly perceived, but it is by far the most satisfactory decision in the English law on the subject.

THE PUBLIC PURPOSES WHICH JUSTIFY TAXATION. — The line between lawful taxation and unconstitutional robbery is not over clear. Whether a collection under guise of a tax is one or the other depends on whether the sum is raised for a public purpose, and what constitutes a public purpose the conflicting authorities make it hard to say. That, in the first instance it is the legislature's duty to judge whether the purpose is public no one doubts. That the courts should overrule this expression of judgment only in cases of clear mistake is equally settled. Where the expenditure will benefit the public directly if at all the taxes are held valid, unless it appears to the courts that the legislature could not reasonably have considered the object public. Where, on the other hand, the immediate effect of the outlay is individual advantage, though great public benefit is sure to result indirectly, the courts are less scrupulous in giving weight to the legislative judgment.

In 1873, the case of *Lowell et al.* v. *Boston*, 111 Mass. 454, held that a tax could not be raised to help the sufferers rebuild after the great fire, though the loans would have resulted in benefit to the whole State. This case is the foundation of a rule which has been laid down by many courts, that, however great the ultimate public good, if the outlay is in the first instance for individual benefit the purpose is not public and will not justify taxation.

A recent decision approving the rule throws light on its character and on the way it is enforced. *Deering & Co.* v. *Peterson*, 77 N. W. Rep. 568, decided by the Minnesota Supreme Court. Here the legislature authorized loans to farmers whose crops had been destroyed by storms, with the purpose of enabling them to buy seed grain for the coming season. A commission was to hear applications and give aid in their discretion, but no one owning more than 160 acres of unincumbered land could have relief. The case might have gone on another ground, but the court held the act unconstitutional, because the purpose was private, and they cite *Lowell* v. *Boston* to sustain this position. In the next breath, however, they say that were the case like *State* v. *Nelson County*, 1 No. Dak. 88, — were the grain loans necessary to keep great numbers of citizens from be-

coming paupers, — the loans might be justified. Though the court dispute it, the public benefit is as indirect here as in the principal case, and the rule logically enforced would seem to require holding the act bad in both instances. The truth seems that no courts are wholly logical in enforcing the rule. Most courts allow bounties for enlistments, and pensions too, though the benefit is direct to the individual. The same courts both allow corporations to take land by eminent domain on the ground that the establishment of great manufacturing industries is a public purpose, *Jordan* v. *Woodward*, 40 Me. 317; *Boston & Roxbury Mill Corp.* v. *Newman*, 12 Pick. 467; and, also, hold that the establishment of these same industries cannot be assisted by public loans, because the object is not a public purpose. *Allen* v. *Inhabitants of Jay*, 60 Me. 120. Considering these conflicting holdings it would seem that the rule, so far as it goes, is a mere instrument for the transfer of legislative power to the courts. That whereas previously the legislative judgment that the object was public was presumed correct till the contrary was shown "beyond a reasonable doubt," now, by this rule, this judgment is presumed mistaken till the courts are persuaded of the necessity. The rule has many limitations. See 5 HARVARD LAW REVIEW, 30. It is probably more of an excuse than a reason seriously relied on. But it is worthy of notice as an indication of that judicial encroachment which some say bids fair eventually to change our whole system of government.

EVIDENCE OF CHARACTER. — With a view to clemency, evidence of the character of a party to the litigation is admissible in criminal cases within certain limits. The privilege is not open to the prosecution until the accused raises the question; and the proof is also confined to evidence of the general reputation of the person whose qualities are under discussion. In those civil suits, such as libel and slander, in which character, by a rule of substantive law, becomes a material fact in the case, it may, of course be duly proved, there being no question of the law of evidence. In cases of negligence, however, and in other civil suits, proof of character as a ground for inference to conduct stands on a different footing. In *Missouri K. & T. Ry. Co.* v. *Johnson*, 38 S. W. Rep. 568, the plaintiff, an engineer of the defendant company, brought action for injuries received in a collision. The company claimed that he disregarded signals and was asleep at his post. The engineer, backed by the testimony of his fireman, insisted that he was engaged in other duties and was unable to be on the lookout. In rebuttal the defendant offered to prove that the plaintiff was in the habit of going to sleep while running his engine. This evidence, excluded below, was held inadmissible by the Supreme Court of Texas, who said that the fact that such a habit existed was without sufficient probative force to affect the determination of the question.

The result reached is clearly correct and follows the great weight of authority. *Southern Kansas Ry. Co.* v. *Robbins*, 43 Kan. 145. The court, however, do not find the true basis for the rejection of such evidence. As a matter of such reason such habits of carelessness on the one hand or of diligence on the other may be of distinct probative value. Still they are unacceptable as tending to prejudice the man in the minds of that peculiar tribunal, the jury, which affects so widely the law of evidence. The dangerous character of this medium of proof outweighs